

HAWAII ADMINISTRATIVE RULES

TITLE 12

DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 8

HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION

PART 1

GENERAL, LEGAL, AND ADMINISTRATIVE PROVISIONS
FOR OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 58

PERMITS AND CERTIFICATES

§12-58-1 Certificates of fitness for explosives
§12-58-2 Safety and health professional

§12-58-1 Certificates of fitness for explosives. (a) No person shall possess, deal, or store explosive materials, which includes dealing, storing or conducting an operation or activity requiring the use of explosive materials or performing or supervising the loading and firing of explosives, without first obtaining a certificate of fitness. A certificate of fitness shall not be required of persons engaged in the handloading of small arms ammunition for personal use involving smokeless propellants in quantities not exceeding twenty five pounds.

(b) Every person conducting an operation or activity requiring the use of explosive materials shall be responsible for the results and any other consequences of any loading or firing of explosive materials and shall insure that the loading and firing are performed or supervised by a person possessing a certificate of fitness.

(c) Explosive materials shall not be sold, given, delivered, or transferred to any person not in possession of a valid certificate of fitness.

(d) Certificate of fitness.

(1) A certificate of fitness authorizes a person to supervise and perform the loading and firing of explosive materials as well as store or deal in explosives.

(2) The applicant for a certificate of fitness shall be:

(A) At least twenty one years of age;

(B) In adequate physical and mental condition to perform the work required;

(C) Able to understand and give written and oral orders;

(D) Free of addiction to narcotics, alcohol, or dangerous drugs;

(E) Able to demonstrate adequate training and experience in the use of explosives and blasting in the class of certificate of fitness for which an application is made; and

(F) Qualified by reason of training, knowledge, and experience in the field of transporting, storing, handling, and use of explosives.

(3) The applicant for a certificate of fitness shall have:

(A) A working knowledge of the content of state and local laws and

regulations which pertain to explosives;

- (B) A minimum of two years experience (and eight displays for pyrotechnicians) within the class of certificate for which an application is made under the supervision of an individual who possesses a related certificate of fitness or an equivalent certificate issued by any other state, city, county, or the federal government which is issued on the satisfaction of requirements similar to those listed in paragraph (2) above, and written confirmation to substantiate the experience; and
- (C) Two written references from persons who are licensed powdermen or pyrotechnic operators that have been licensed for at least one year.

Personnel who are regularly employed in quarry operations and frequently use explosives may be considered experienced after one year if, in the opinion of the director, the experience gained is proven to be equivalent to two years in normal operations.

- (4) Applicants shall authorize the release to the department of current, to within six months, criminal history records from their resident state, as well as authorize the release of related police, probation, department of the attorney general, or other source of criminal records. Applicants must arrange for the criminal history records to be received by the department at the time they wish the application to be reviewed. Applications without current criminal history records are deemed incomplete and shall not be reviewed. Any recognized national criminal history record check, such as that of the Federal Bureau of Investigation (FBI), will be acceptable to the department.
- (5) The applicant shall submit an application along with the documentation supporting the requirements of paragraphs (2) through (4). Any information omitted on the application or failure to submit required documentation shall be cause for denial of the application.
- (6) All complete applications consisting of the requirements in paragraphs (2) through (5), shall be submitted to the director at the address specified on forms provided by the director. Complete applications will be reviewed and all applicants will be notified within four months of submission whether the applicant qualifies to take the certificate of fitness examination. Complete applications that qualify the applicant to take the certificate of fitness examination are valid for six months from the date the application is received. Qualifying applicants will be informed of the date, time, and location of the examination. Certificate of fitness examinations will be held on the last Wednesday of every month, if the last Wednesday in the month is a holiday then the examination will be held on the Monday of that week. Applicants must present valid local, state, or federal photograph identification (e.g., driver's license, military identification, etc.) at the time of the examination for admittance.
- (7) Upon notification of the certificate of fitness examination eligibility, the applicant must submit the non-refundable fee as required in section 12-56-4, at least three days before the scheduled examination date. Payments at the door will not be accepted.
- (8) Applicants will be notified on the same day of the examination, whether or not they have passed. Fingerprinting of the applicant by the department along with the applicant's photographs must be submitted before the certificate of fitness can be issued. Photographs must be of passport size and quality, recent to within 6 months, and include full face and bust of the applicant.
- (9) The applicant for a certificate of fitness shall pass a qualifying written examination with a minimum passing score of seventy per cent.

(e) Any person who fails a qualifying examination may take a second examination using the same application not less than ninety days from the date of the first examination and not more than one hundred and fifty days from the date of the first examination. For second examinations, the initial application remains valid provided the first examination was taken within the six-month life of the application.

(f) Classes of certificate of fitness are shown in table 58-1 below.

TABLE 58-1

Class	Category	Description
A	Unlimited	All types of blasting.
B	General	All phases of blasting operations in quarries, open-pit mines, and above-ground construction.
C	Special	Special blasting as described on the permit, such as quarries and open-pit mines only, underground only, demolition only, seismic prospecting only, pyrotechnics only, agriculture only, underwater only, special effects, cesspools, dry wells, or implosion of structures.

(g) Protection of certificates.

- (1) The certificate of fitness shall be carried by the certificate holder during blasting operations.
- (2) Certificate of fitness holders shall take every reasonable precaution to protect their certificates from loss, theft, defacement, destruction, or unauthorized duplication. Any of the foregoing occurrences shall be reported immediately to the director.

(h) Certificate of fitness restrictions.

- (1) No certificate can be assigned or transferred.
- (2) Certificates shall be dated and numbered, and will be valid for no more than one year from the date of issue.

(i) Denial or revocation of certificates.

- (1) A certificate may be denied or revoked for any of these reasons:
 - (A) Non-compliance with any order of the director within the time specified in the order;
 - (B) Proof that the applicant or holder has been convicted of a crime directly related to the applicant's possible performance under the certificate applied for and where the applicant has not been sufficiently rehabilitated to warrant the public trust;
 - (C) Proof that the applicant or holder advocates, or knowingly belongs to any organization or group that advocates violent overthrow of or violent action against any federal, state, or local government;
 - (D) Proof that the applicant or holder suffers from a mental or physical defect that would interfere with or prevent the applicant's safe handling of explosives;
 - (E) Violation of any explosive law, standard, or rule;
 - (F) Proof of giving false information or making any misrepresentation for the purpose of obtaining a certificate;
 - (G) The applicant or holder is a fugitive from justice;
 - (H) The applicant or holder is an unlawful user of, or is addicted to, narcotics, alcohol, or dangerous drugs that would interfere with or prevent the applicant's or holder's safe handling of explosives;
 - (I) The applicant or holder has been adjudicated a mental defective; or
 - (J) For any other reason which in the discretion of the director would create a hazard or risk to persons or property.

- (2) Any denial or revocation shall be final and conclusive against the applicant or holder unless a written request for reconsideration is filed with the director. The written request for reconsideration shall be an original, served on the director and must be postmarked, or if not mailed, received by the director within twenty days of the receipt by the certificate of fitness holder of the denial or revocation. The reconsideration hearing shall be held by the department within thirty days of the receipt of the written request. The reconsideration hearing shall be de novo and decisions may be contested only to the Hawaii Labor Relations Board (HLRB). The applicant or holder may request an informal conference to discuss the denial or revocation, but the informal conference shall not suspend or change the twenty-day filing requirement for the reconsideration request.
- (3) Upon notice of the revocation of a certificate, the former holder shall immediately surrender the revoked certificate to the director.
- (4) Any person whose certificate of fitness has been revoked may apply for a certificate of fitness only after the director has concluded that the reason(s) for the revocation no longer exists or no longer presents a risk to public or worker safety.
- (j) Record keeping and reporting.**
 - (1) A person holding a certificate of fitness shall keep a daily record of all explosive material received, fired, or otherwise used.
 - (2) Each manufacturer, dealer, or user shall submit to the director a quarterly inventory report of all explosive materials of which they are responsible for, no later than thirty days after the end of the quarter. The quarters shall be from January through March, April through June, July through September, and October through December. The inventory report shall include:
 - (A) The location(s) where the explosive materials are stored or are located as of the last day of the quarter for which the report is being filed;
 - (B) A true and accurate physical inventory of the quantities and types or kinds of explosive materials at each location identified in subparagraph (A);
 - (C) The name, company title, and signature of the person attesting to the accuracy of the inventory report (if the person signing the inventory report is a certificate of fitness holder, please provide the certificate of fitness number); and
 - (D) Any other information the director may require.
 - (3) The loss, theft, or unlawful removal of explosives or blasting agents shall be reported immediately to the director by the certificate of fitness holder.
- (k) Renewal applications.**
 - (1) Application for a renewal of a certificate of fitness shall be made to the director on forms provided by the director and shall contain such information as may be required. Effective January 1, 2003 the application forms shall be accompanied with proof that the applicant has received and has satisfactorily completed, within the previous three years at least eight hours of approved training or education in the use, storage, transporting and handling of explosives or pyrotechnics. The training or education must be specific to the type of certificate of fitness the holder possesses.
 - (2) Prior to the approval of any application for renewal, the applicant shall authorize release to the department a current to within six months, criminal history record from their resident state, as well as authorize release of related police, probation, department of the attorney general, or other source of criminal records. Applicants must arrange for the criminal history records to be received by the

department at the time they wish the application to be reviewed. Such criminal history records must be current to within six months of the renewal date. Any recognized national criminal history record check such as the Federal Bureau of Investigation (FBI) will be acceptable to the department. (Records shall be used only to determine the applicant's qualification for a certificate and will otherwise be kept confidential.)

- (3) A renewal fee as required in section 12-56-4 shall be payable at the time of application for renewal. The renewal shall be valid for one year unless revoked by the director.
- (4) Complete applications consisting of the requirements found in paragraphs (1) through (3) for certification of fitness renewals shall be submitted to the director at the address specified on forms provided by the director. Complete renewal applications will be reviewed and all applicants will be notified within four months of submission whether the applicant qualifies to renew their license. Those qualifying to renew their certificate will be informed of the date, time, and location for completing the renewal process. Those qualifying to renew their certificate of fitness must, at the time of renewal present two current passport quality, full-face, and bust photographs of the applicant. Certificate of fitness renewals must be done in person at least once every three years, so that identification of the holder can be verified.
- (5) If an application for renewal is filed with the director before the expiration of the current certificate, the renewal will become effective when the current certificate expires. No renewal or certificate shall be issued more than thirty days before the expiration date of the current certificate.
- (6) If an application for renewal is filed ninety or more days after the expiration of the old certificate, the applicant shall submit to the application process of subsection (d). [Eff 3/29/99; am 2/14/00; am 12/29/00; am 1/10/03] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-9)

Historical note: Section 12-58-1 is based substantially upon section 12-98-3, [Eff 12/6/82; am 8/16/84; am 3/22/91; am 2/8/97; am 4/11/98; R 3/29/99] and section 12-125-3. [Eff 7/12/82; am 9/22/84; am 8/5/88; am 2/8/97; am 4/11/98; R 3/29/99]

§12-58-2 Safety and health professional. (a) Safety and health professional certification.

- (1) Safety and health professionals, including those employed by the department, shall be certified by the department in accordance with procedures and criteria set forth in this rule.
- (2) Certification of safety and health professionals.
 - (A) Any individual performing an audit for a participating employer under subsection (b), including safety and health professionals employed by the department, shall be certified by the director.
 - (B) In order to be eligible for certification, individuals must exhibit knowledge and familiarity with the content and application of the Hawaii Occupational Safety and Health standards and regulations. The applicant must possess one of the following qualifications and provide relevant documentation such as college transcripts, copies of certifications or licenses to support the application:
 - (i) Certification as a Certified Safety Professional (CSP) granted

- by the Board of Certified Safety Professionals (BCSP);
 - (ii) Certification as a Certified Industrial Hygienist (CIH) granted by the American Board of Industrial Hygiene (ABIH);
 - (iii) State licensure as a professional engineer, with five years of documented professional safety and health experience within the last seven years prior to the filing of the application for certification;
 - (iv) A bachelor of science degree in industrial hygiene, safety, occupational safety and health, biology, chemistry, environmental health and science, physics, engineering, or a related field, with five years documented professional safety and health experience deemed acceptable by the director within the last seven years prior to the filing of the application for certification; or
 - (v) Nine years of documented professional safety and health experience deemed acceptable to the director within the last ten years prior to the filing of the application for certification.
- (C) All applications for certification as a safety and health professional shall be submitted to the director in writing on forms provided for the purpose or equivalent format and shall be accompanied by:
- (i) A reference from the applicant's current or past supervisor attesting to the quality and the breadth of the qualifying work experience or self-certification where the applicant is self employed. Both the reference from the applicant's current or past employer and the self-certification must contain evidence that the applicant helped employers reduce their injury and illness incidence rates and workers' compensation costs;
 - (ii) A reference from a safety and health professional familiar with the applicant's work experience and character; and
 - (iii) Any other information or documentation deemed necessary by the director.
- (D) Applications shall be:
- (i) Valid for six months. The six months shall begin upon the director's receipt of the first item submitted for the application;
 - (ii) Considered a complete application when all items in 2(B) and (C) have been submitted to the director; and
 - (iii) Accompanied by a non-refundable application fee of \$50, as required in section 12-56-2 and shall be sent to the address specified in the application package.
- (E) Within forty-five days of the receipt of a complete application packet, the director shall notify the certificate applicant in writing of the issuance or denial of the certification. Notification of denial of a certificate on any grounds shall set forth the grounds for such denial. An applicant denied a certificate on any grounds other than failure to complete a certificate application may request a reconsideration of denial meeting by submitting a written request for a reconsideration conference within ten calendar days of the receipt of such denial. A decision will be sent to the applicant within ten calendar days after the conference.
- (F) If the original denial is upheld at the reconsideration of denial conference, the applicant may then request a hearing by submitting a written request for a hearing within ten calendar days of the receipt of the second denial. The hearing shall be held by the

- director or the director's designee. A decision on the hearing will be sent to the applicant within ten calendar days. The results of the hearing shall be final.
- (G) Upon approval of the application for certification, applicants will be assessed a non-refundable certification fee of \$300 which shall be payable prior to the issuance of the certificate.
 - (H) Certificates are valid for three years from the date of issuance.
 - (i) Certificates are renewable every three years for a non-refundable fee of \$100.
 - (ii) If a certificate is renewed before the expiration date of the current certificate, the renewal will become effective when the current certificate expires. No renewal or certificate shall be issued more than thirty days before the expiration date of the certificate or ninety days after the expiration date of the current certificate.
 - (I) All HIOSH, occupational safety and health advisors involved in the evaluation of workplaces for any HIOSH approved achievement recognition programs are considered to be certified safety and health professionals during their employment with HIOSH as an advisor.
- (3) Suspension or revocation of certification.
- (A) A certified safety and health professional certificate may be suspended or revoked by the director upon a determination by the director that:
 - (i) The safety and health professional's hazard analysis or safety and health program development is in conflict with state safety and health standards applicable to the worksite;
 - (ii) The safety and health professional knowingly included false or misleading information in any report required by subsection (b); or
 - (iii) The safety and health professional no longer meets the qualifications for certification set forth in subsection (a)(2).
 - (B) When in the process of determining whether the certification should be revoked or suspended, the safety and health professional shall make available all documents requested by the department. Safety and health audit reports received by the department for the purpose of paragraph (3) shall not be used as evidence in any occupational safety and health inspection or investigation against the employer named in the audit.
 - (C) Upon making a determination that a safety and health professional's certificate should be revoked or suspended, the director shall inform the safety and health professional in writing, setting forth the reasons for the determination. The safety and health professional may request a hearing on the matter by submitting a written request for a hearing within ten calendar days of receipt of the notice of revocation or suspension. The hearing shall be held by the director or the director's designee.
 - (D) A safety and health professional's certificate which has been suspended or revoked may be reinstated under the following circumstances:
 - (i) If the revocation or suspension was premised upon a failure of the safety and health professional to meet the qualifications for certification set forth in subsection (a)(2), upon a demonstration by the safety and health professional that those qualifications have been met.
 - (ii) If the revocation or suspension was premised upon findings

described in subparagraph (A)(i) or (ii), upon the director's review and approval of the reapplication for certificate by the individual. Reapplication may be submitted no sooner than one year after the expiration of the period of suspension or revocation established by the director.

(E) An individual applying for reinstatement of a safety and health professional certificate shall be subject to the same procedures as those which pertained to application for the original certificate.

- (4) Severability. If any provision of this standard or the application thereof to any person or circumstance is held invalid, invalidity shall not affect other provisions or applications of this rule which can be given effect without the invalid provisions or applications and to this end the provisions of this rule are declared to be severable.
- (5) Applicability of other state and federal regulations. Nothing contained in this standard shall be read or applied in a manner to abrogate or otherwise limit the responsibility of an employer subject to this standard to comply with all requirements set forth in state and federal safety and health standards to which the employer would otherwise be subject, nor shall any provision of this standard be read or applied in a manner as to abrogate or otherwise limit the liability of employer to fines or other penalties to which it would otherwise be subject for failure to comply with the rules and regulations.

Note: Firms or companies utilizing multiple staff members to conduct safety and health audits may elect not to certify all staff members as safety and health professionals so long as the audits conducted by noncertified safety and health professionals are reviewed and approved in writing by the certified safety and health professional on staff.

(b) Safety and health professional audits.

- (1) Individuals who perform the audit or review functions set forth in this section, shall limit their activities under the standard to the area of their expertise.
- (2) All safety and health professionals granting certifications of effective safety and health programs for employers under this rule shall comply with the following:
 - (A) The certification of an employer's safety and health program shall include an audit which includes both a worksite hazard assessment and an evaluation of the employer's safety and health program.
 - (B) Safety and health professionals performing worksite hazard assessments shall utilize applicable state regulations, as well as recognized safe work practices, as the basis for both the review of worksite safety and health conditions and the recommendation of corrective measures.
 - (C) Safety and health professionals shall not certify their own places of employment or those workplaces controlled by their employer.
 - (D) Wherever industrial hygiene sampling is determined to be necessary during the conduct of the audit, the safety and health professional shall utilize testing protocols which conform to those recommended by the National Institute for Occupational Safety and Health (NIOSH) or HIOSH or both. All sample analyses must be performed by a laboratory that has been accredited by the American Industrial Hygiene Association.
 - (E) The safety and health professional shall include as part of the overall audit, an opening conference which shall include a discussion of the following:
 - (i) The manner in which the audit would be conducted;
 - (ii) The information and other assistance which would be required of

- the employer in order to allow the safety and health professional to perform their function;
 - (iii) The opportunity for participation of employees or employee representatives in the audit;
 - (iv) The sampling which might be required as part of the audit as well as the sampling protocols which would be utilized;
 - (v) The requirements of this standard with regard to the conduct of audit;
 - (vi) The results of the audit and the employer's right to not disclose those results to the department; and
 - (vii) A reiteration of the voluntary nature of the audit and an explanation that if the employer is uncertain as to their desire to participate in the safety and health audit and, therefore, wishes to withdraw from the audit, action may be taken at any time.
- (F) Upon completion of the audit establishment visit, the safety and health professional will conduct a final closing conference with the employer and employee representatives, if applicable, to discuss the audit findings and recommendations, as well as any other information which the safety and health professional intends to include in the report.
- (G) The safety and health professional shall provide the employer with a written report at the conclusion of the audit. The written report must be forwarded to the employer as soon as practicable following completion of the audit but no more than twenty calendar days from the final closing conference date.
- (H) The audit report shall, at a minimum, contain the following:
- (i) The name of the safety and health professional performing the audit and the department's certificate number of the safety and health professional. If the report has been reviewed and approved by another certified safety and health professional pursuant to subparagraph (K), the department certificate number of that individual shall also be included;
 - (ii) The name and location of the establishment at which the audit was performed;
 - (iii) The date on which the audit visit was conducted;
 - (iv) The name of the employer for whom the report was prepared;
 - (v) The activity or activities in which the establishment is primarily engaged and a comprehensive synopsis of its work operation;
 - (vi) The number of employees at the worksite;
 - (vii) A complete review of each of the required elements of the safety and health program set forth in chapters 12-60 and 12-110 and an assessment of the employer's compliance with these requirements, including a discussion of the reasons why the program elements have been determined to be adequately met or why deficiencies have been identified;
 - (viii) An identification and description of all safety and health hazards found at the establishment:
- (ix) A description of all monitoring performed at the establishment, including the methodology used, the identification of the laboratory processing the sample, and the monitoring results achieved;
 - (x) Recommendations for the correction of all safety and health hazards or deficiencies noted during the audit, including either a recommended time frame for correction of each hazard identified or a categorization of the hazards by severity,

- utilizing the HIOSH protocols established for this purpose; and
- (xi) A signed statement by the safety and health professional who conducted the audit and prepared the report signifying that the information contained in the audit report is technically accurate and meets the requirements and intent of this standard. If the report has been reviewed and approved by another party, a similar signed statement must also be included from that party.
- (I) Reporting and recordkeeping audits shall be maintained by the safety and health professional for a minimum of three years.
- (3) Employers desiring to receive certifications of effective safety and health programs from certified safety and health professionals shall submit the following information to the auditing safety and health professional after the completion of corrective measures necessary to address hazards and deficiencies noted in the written audit report. The information shall be made a part of the report within fifteen working days:
 - (A) A written report documenting all measures instituted to correct all safety and health hazards or deficiencies in the safety and health program which are noted in the report submitted by the safety and health professional. The report documenting these measures shall also contain a certified statement from the employer indicating that the deficiencies have been corrected and the recommendations of the safety and health professional have been implemented. In lieu of the employer submitting documentation, the safety and health professional who conducted the initial audit may include a signed statement attesting to the employer's compliance during a subsequent audit; and
 - (B) The name, address, and phone number of the employer's designated contact person for the purpose of the audit.
- (4) Upon review of the submission required above, the safety and health professional will make a determination as to whether the employer has complied with the minimum requirements of this rule, including the institution of appropriate corrective actions and is therefore eligible for the premium discount certificate. If eligible, the safety and health professional shall issue the premium discount certificate to the employer.
- (5) Establishments that are accepted into any HIOSH-approved achievement recognition program are eligible for the premium discount certificate.
- (c) Relationship to HIOSH enforcement activities. Whenever HIOSH permits certified safety and health professionals to provide certificates or documents granting establishments or jobsites abbreviated inspections or other enforcement privileges, they may not certify or document their own workplace or other workplaces controlled by their employer. [Eff 3/29/99; am 2/14/00; am 5/21/04] (Auth: HRS §396-4) (Imp: HRS §§396-4, 396-4.5)

Historical note: Section 12-58-2 is based substantially upon section 12-50-7. [Eff 1/26/96; am 11/16/96; am 4/11/98; R 3/29/99] and section 12-50-8, [Eff 1/26/96; am 11/16/96; am 5/2/97; R 3/29/99]